



An
Bord
Pleanála

Inspector's Report ABP-302069-18.

Development	Agricultural land reclamation with inert waste.
Location	Newbawn, Rathdrum, County Wicklow
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	18/74.
Applicant	TSD Drumclay Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellant	Eimear O'Halloran.
Observers	George and Suzanne Acres.
Date of Site Inspection	13 th September 2018.
Inspector	Philip Davis.

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1.0 Introduction

This appeal is by a local resident against the decision of the planning authority to grant permission for the improvement and reclamation of a 14.34 hectare field by way of the importation of subsoils and inert materials. The grounds of appeal relate mostly to traffic and amenity issues. The proposed works will require a waste licence.

2.0 Site Location and Description

2.1. Newbawn, Rathdrum, Wicklow

The townland of Newbawn is located some 3km directly east of the town of Rathdrum in south central Wicklow on the eastern foothills of the Wicklow Mountains. The townland is mostly around the 130 metre contour and is characterised by a mix of grazing land with some upland heath and conifer plantation. A small stream, a tributary of the Avonmore River, runs in a shallow valley in a southwards direction through the townland. The area is served by a small number of third class roads. Settlement is characterised by a scattering of dwellings and farmsteads, with Rathdrum the nearest significant town or village.

2.2. The site and environs

The appeal site, with a site area given as 14.38 hectares, is an elongated field running south from its narrow frontage with a third-class road (L1152) along the eastern side of the river valley. The levels fall from east to west and north to south. The land is used for rough grazing, and appears to be relatively poor quality, with rushes growing on the lower lying parts.

The site is bounded to the **north** by a ditch and hedgerow, with the minor road across this. On the opposite side of the road is a house and large agricultural complex, with further agricultural areas beyond. On the **north-east** corner are two detached dwellings with further dwellings along the road beyond these.

To the **west** the site is bounded by the stream flowing in a heavily vegetated channel. Beyond this are open fields. There are further fields extending downslope

to the **south**, where the site bounds a watercourse, with open countryside and a scattering of dwellings and farm buildings further south and west.

3.0 Proposed Development

The proposed development is described on the site notice as follows:

The reclamation of land through the filling of material comprising clay, silt, sand, gravel or stone for the purpose of improvement of land, together with site access and roadway and other ancillary site works.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission, subject to 11 largely standard conditions.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- Notes a number of relevant policies, including WE3, to facilitate the development of existing and new waste recovery facilities, and general policy on waste management (with regard to the Regional Waste Management Plan). In addition, Appendix 1 of the Plan sets out development standards for facilities for the disposal of inert materials (Section 9).
- Notes one objection, in addition to a number of letters of support.
- The type of development is considered acceptable in principle.
- Notes a number of inconsistencies in the application documents, especially with regard to EIA threshold criteria.
- A supplementary report attached indicated that as the site is considered to be wetlands an EIAR would be required. For this and other reasons a refusal was recommended.

- Following the submission of further information, a second report concluded that an EIA was not required as it was confirmed that the annual intake would not exceed 25,000 tonnes per annum and the scale and nature of the anticipated impacts would not warrant the submission of an EIA. It was also concluded that the site cannot be categorized as wetlands as defined in the Regulations.
- The additional traffic information was considered acceptable.
- A grant of permission was recommended.

Following the submission of further information, a subsequent report stated that the details were adequate and that an EIA was not required and the proposed development was otherwise acceptable.

4.2.2. Other Technical Reports

4.2.3. **Arklow Area Engineer:** Notes issue of damage to the road surface from trucks using the L1152. Following the submission of further information, another memo states that the *'sight lines outlined in response... are probably adequate for this application'*.

4.2.4. **Waste Management Section:** Notes issues with the application, in particular the final landform, but notes that there are potential benefits in importing soils to improve the land. It is noted that it will require a permit to operate as a waste facility. Following the submission of further information, an additional memo recommends two conditions, one limiting intake to 24,750 tonnes per annum, the second ensuring that the depths of the the soil will not exceed 1 metre.

4.3. Prescribed Bodies

An Taisce: States that it is unclear from the information submitted as to the quantum of material proposed to be imported per annum – notes Article 103 of the Regulations. States that An Taisce considers that the proposed development has the potential to have a negative impact on the water quality of the Avonmore River.

Department of Culture, Heritage and the Gaeltacht: Notes proximity of Recorded Monument WI030-141 and recommends an archaeological monitoring condition.

4.4. **Third Party Observations**

A number of residents of Newbawn townland wrote to state that they have no objection to the proposed works.

Eimear O'Halloran objected to the proposed development for amenity and traffic and environmental reasons.

5.0 **Planning History**

There are no records of previous applications on the site.

6.0 **Policy Context**

6.1. **Development Plan**

The proposed development is in open countryside. General policy is to facilitate waste treatment facilities in appropriate areas in line with the Eastern Midlands Regional Waste Plan.

6.2. **Natural Heritage Designations**

There are no European sites in the immediate vicinity of the site, but the Vale of Clara SAC (000733) (woodland habitat) is around 2 km to the north-west.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

- It is argued that there are an excessive number of similar facilities in the area – including Ballynagran Residual Landfill site (EPA Licence no. 165-02); another under WFP-WW-15-0035-01; one near Kilcandra Stud; and another with permit number WFT-WW-16-0038-01.

- It is argued that the submission of the applicant that there are many sand and gravel pits in the area is misleading.
- Strong concerns are expressed at the impact on local road safety and the quality of the road surface resulting from all the heavy vehicle movements.

7.2. Planning Authority Response

The planning authority did not respond to the grounds of appeal.

7.3. Applicants response

- With regard to road damage, it is noted that Condition no.4 sets a development contribution towards public infrastructure.
- With regard to claims of issues regarding similar works at Cunniamstown Big (Wicklow CoCo decision ref no. 16571) it is argued that the impacts were not as great as claimed by the appellant.
- It is noted that Condition no. 3(d) of the permission sets a string limit on the annual quantity of material that can be imported to the site.
- A number of provisions are set out to protect local residential amenities, including water sprinklers, wheel washes, and dust/noise monitors.
- It is denied that any of the site is 'wetland' (a letter from Teagasc is attached with regard to the past use of the lands).
- It is argued that the issue of sightlines was agreed to the satisfaction of the County Council.
- It is stated that four of the landfill sites mentioned in the appeal letter have now shut down, and the existing Ballynagran landfill is 6 km from the site. It lists five quarries in the area, two of which are operational.

7.4. Other responses

The EPA were requested to comment by the Board but no response was received within the statutory time period.

8.0 Assessment

Having inspected the site and reviewed the file documents, I consider that the main points of this appeal can be addressed under the following headings:

- Nature and scale of the development
- Principle of Development
- EIAR
- Amenity
- Traffic
- Flooding
- Cultural heritage
- Appropriate Assessment
- Other issues

8.1. Nature and scale of the proposed development

The site description just gives a basic overview of the proposed development, which would be subject to a waste permit or waste licence. The appeal site is a merged series of fields on the eastern side of a shallow river valley (a tributary of the Avonmore). The land is used for grazing, with evidence that it is poor quality land, with rushes on lower levels closer to the stream. The proposal generally is to raise the level of the land by a maximum of one metre by importing appropriate inert waste materials (subsoil and topsoil). It is proposed to import 99,000 tonnes (c. 66,000 cubic metres) of material over four years, at a maximum rate of 24,750 tonnes per annum. The source of the material is not stated. The applicants propose a 10 metre buffer zone next to watercourses and land drains, in addition to control measures such as wheel washers. A new upgraded access is required next to the existing farm gate.

8.2. Principle of development

The proposed development involves the disposal of inert waste – the site is within the area of the **Eastern Midlands Region Waste Management Plan 2015-2021**. The Plan states that as of 2012 there was in the region of 2 million tonnes of C&D

waste arisings, although that figure was rising rapidly. Section 11.2.4 of the Plan outlines some of the specific issues with tracking and monitoring these wastes, specifically the problem of misclassification. Apart from general policies encouraging re-use and recycling and appropriate treatment, the Regional Plan lacks specific policies of relevance to the type of development proposed.

The **Wicklow County Council 2016-2022 County Development Plan** has a number of waste specific objectives (Chapter 9.3), although none relate specifically to this type of non-inert landfill. General policies are set out as follows:

9.3.2 Solid Waste Management

It is the policy of the Council, as set out in the Regional Waste Management Plan, to:

- prevent or minimise the production of waste in the first instance;**
- reduce, re-use and recycle to the maximum extent possible;**
- endeavour to recover energy from waste where possible; and**
- ensure the efficient and safe disposal of any residual waste.**

The role of a land-use plan in the achievement of these objectives is somewhat limited, but it will play a role in guiding the location of new facilities and services that are necessary to implement the Waste Management Plan

Solid Waste Management Objectives

WE1 To require all developments likely to give rise to significant quantities of waste, either by virtue of the scale of the development or the nature of the development (e.g. one that involves demolition) to submit a construction management plan, which will outline, amongst other things, the plan for the safe and efficient disposal of waste from the site.

WE2 To require all new developments, whether residential, community, agricultural or commercial to make provision for storage and recycling facilities (in accordance with the standards set out in Development & Design Standards of this plan).

WE3 To facilitate the development of existing and new waste recovery facilities and in particular, to facilitate the development of 'green waste' recovery sites.

WE4 To facilitate the development of waste-to-energy facilities, particularly the use of landfill gas and biological waste.

WE5 To have regard to the Council's duty under the 1996 Waste Management Act (as amended), to provide and operate, or arrange for the provision and operation of, such facilities as may be necessary for the recovery and disposal of household waste arising within its functional area.

WE6 To facilitate the development of sites, services and facilities necessary to achieve implementation of the objectives of the Regional Waste Management Plan.

There is little specific relevant guidance or information within either the Regional or Development Plan as to the appropriateness of this type of use for material, or site selection criteria, or information on sources of this waste or whether there is a shortfall of this type of facility. The planning authority referred to policy WE3, although I would not consider that this proposal is for 'green waste', this is a very different type of material. WE6 is probably the only relevant specific policy as it does set a requirement to facilitate appropriate facilities, but I would note that the Regional Plan is largely silent on inert wastes such as those proposed for this site. There is no information provided on the sourcing of material for the site. It seems unlikely that there is sufficient construction or related activity in the immediate area to supply such a large quantity, and the site is some distance from major urban areas under growth pressures.

In the absence of more specific policies I would conclude that the proposed development is in something of a neutral policy environment and should best be judged on its own merits.

8.3. EIAR

The stated quantities for delivery to the site are just under the categories of waste set out in Schedule 5, Part 2, 11(b), which requires EIA for the '*Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this schedule.*' As such, the proposed development does not fall within the mandatory requirements.

The question arose in the original submission as to whether the lower part of the site should be considered 'wetlands' under the definition within the 2001 Regulations.

The definition of Wetlands in the Regulations is as follows:

“ natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water.”

Some of the lower parts of the site near the watercourse have indications of poor drainage, most notably rushes. At the time of my site visit the lands were all quite dry, although of course this was after an unusually arid summer. From my observations, I would consider it more likely that the rushes are the result of generally poor subsurface drainage, rather than inundation or saturating from the

adjoining watercourse. Therefore, having regard to the information submitted with the application, in addition to the records in older OS plans, I'm satisfied that none of the site can be considered 'wetland' under the definition set out in the Regulations and related legislation.

There are no SAC's in the immediate vicinity – the closest two are SAC's to the north – both are woodland habitats and so there is no likely pathways for impacts or pollution. The adjoining watercourse discharges to the Avonmore (which is a salmonid habitat, but not an SAC or SPA), which discharges to a coast with EU designated dune systems and coastal habitat.

Having regard to the nature of the materials I am satisfied that there is no real likelihood of a significant effect on the environment. I therefore conclude that EIAR is not required.

8.4. Amenity

The site is immediately next to a pair of detached dwellings, both on higher ground. A third dwelling is a little further along the road to the east. There is a farmstead opposite. The proposed access is significantly less than 50 metres from the nearest dwelling – this is an existing farm gate access. It is projected that around 50 trucks a day would be accessing the site, but given the lack of an obvious single source of material I would consider it likely that vehicle movements would not be at a steady rate through the year. There is a water sprinkler and wheelwasher proposed for mud and dust control.

The appellant has noted that there are a number of quarries and landfills in the area, although the evidence suggests that most are closed, or not active, although during my site visit I noted visible evidence of dust on nearby roads presumably originating from quarry vehicles. In other respects, the area has a quiet, rural ambience in a very pleasant landscape.

While most of the deposition works will be some distance away from the houses, I would consider that most disturbance will be at the entrance. While some heavy vehicle movements is normal for any large agricultural holding, I would consider that the level of movement that will arise is excessive so close to two long established residential dwellings, in particular in the absence of compelling policy, environmental, or other justifications for a disposal site in this location. I would therefore recommend a refusal for this reason.

8.5. Traffic

The proposed development involves the importation of close to 100,000 tonnes of material in heavy vehicles over four years. The local rural road (L1152) system is quiet but has been used in the past for several quarries and is still apparently subject to some heavy vehicle loading. The site is approximately 700 metres from the nearest main road, the R752 linking Rathdrum to Rathnew/Wicklow Town. While the road surface is quite good, the road is not particularly straight. I noted relatively high traffic speeds during my site visit, so I would not consider it a particularly pleasant country road for walkers or cyclists.

The site access is east of a southwards turn in the road with generally poor visibility. The planning authority considers, however, that the sight lines from the proposed access are in accordance with guidelines and is safe.

While I would have some concerns about generating so much heavy traffic on an L road for a land use which is not strongly supported by adopted policy guidance, the planning authority and the local roads engineer appear to consider it satisfactory subject to conditions and development contributions, so I would not recommend a refusal for this reason.

8.6. Flooding

Although next to a river, there is no evidence that significant parts of the site have been subject to flooding. The applicants propose that no works would take place within 10 metres of a watercourse or land drain. It is not entirely clear as to how the works would affect run-off to the river in the long run, but it is likely to be slightly reduced due to better infiltration. I would therefore consider that the proposed works do not constitute a flood hazard and would not have downstream flooding impacts.

8.7. Cultural Impacts

The Department of Culture, Heritage and the Gaeltacht recommended a condition such that the works be subject to archaeological assessment due to the proximity of Recorded Monument WI030-141 (enclosure). This site is actually nearly 2 km to the east of the site, so I assume this request is in error. Due to the sites proximity to a watercourse it cannot be ruled out that there could be remains of older settlements, but in the absence of direct evidence I would not recommend the Board repeat this condition if it is minded to grant permission.

8.8. **Appropriate Assessment**

The Vale of Clara SAC (000733) is around 2 km to the north-west. This is a woodland habitat, and like other designated habitats in the area are upstream of the appeal site so there are no obvious paths for pollution. The nearby river drains to the Avonmore, which is a salmonid habitat but does not have a Natura 2000 designation. The river discharge to the Irish Sea at a point on the coast near to where there is a designated (SAC) dune system. But due to the distance from the site and the attenuation of any possible run-off there is no likely effects. I do not consider that there are any other designated habitats in the area that are close enough or have any pathways for pollution or impact.

I would therefore consider that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000733, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.9. **Other issues**

I do not consider that there are any other significant planning issues arising. If the Board is minded to grant permission the planning authority considers that the proposed works are covered by the adopted Development Contribution Scheme, but no other contribution or Bond was required.

9.0 **Recommendation**

I recommend that the proposed development be refused permission for the reasons and considerations set out in the schedule below.

10.0 Reasons and Considerations

The site is located in a rural area adjoining two long established dwellings. It is not considered that it has been demonstrated within the context of policy set out in the Eastern Midlands Region Waste Management Plan 2015-2021 and the Wicklow County Development Plan 2016-2022 that there is a strong policy justification for locating an inert waste disposal site in such a rural area so close to dwellings. It is considered that the location of the works, and in particular the site access, lacks adequate separation distance from these dwellings would thus cause serious injury to the amenities of the residents. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Philip Davis
Planning Inspector

29th November 2018